

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

ROBERT SOKOLOVE, DAVID MCCARTHY, : CIVIL ACTION
WILLIAM SHIELDS, and CITIZENS :
FOR REHOBOTH BEACH, a political :
action subcommittee, :

Plaintiffs, :

v :

CITY OF REHOBOTH BEACH, and :
GREGORY FERESH, an individual :
and as Manager of the City of :
Rehoboth Beach, Delaware, :

Defendants. :

NO. 05-514 (KAJ)

Wilmington, Delaware
Tuesday, July 26, 2005 at 10:00 a.m.
PRELIMINARY INJUNCTION HEARING

BEFORE: HONORABLE KENT A. JORDAN, U.S.D.C.J.

APPEARANCES:

WOLF BLOCK SCHORR and SOLIS-COHEN, LLP
BY: TODD C. SCHILTZ, ESQ., and
SHAWN P. TUCKER, ESQ.

Counsel for Plaintiffs

OBERLY, JENNINGS & RHODUNDA, P.A.
BY: WILLIAM J. RHODUNDA, JR., ESQ.

and

Brian P. Gaffigan
Registered Merit Reporter

1 APPEARANCES: (Continued)

2
3 BROWN SHIELDS BEAUREGARD & CHASANOV
4 BY: WALTER W. SPEAKMAN, JR.
(Dover, Delaware)

5 Counsel for Defendants

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7 P R O C E E D I N G S

8 (REPORTER'S NOTE: The following telephone
9 conference was held in chambers, beginning at 10:00 a.m.)

10 THE COURT: Good morning. Please be seated.

11 MR. RHODUNDA: Good morning, Your Honor.

12 THE COURT: This is the time we've set for
13 expedited hearing on the motion for preliminary injunction
14 filed by the plaintiffs in this matter. Mr. Schiltz.

15 MR. SCHILTZ: Good morning, Your Honor. Todd
16 Schiltz from Wolf Block Schorr and Solis-Cohen here on
17 behalf of plaintiffs Robert Sokolove, Dave McCarthy, William
18 Shields and Citizens for Rehoboth Beach. With me at counsel
19 table is Shawn Tucker, my partner, as well as Robert
20 Sokolove, Your Honor.

21 THE COURT: All right. Before we start,
22 we'll do the rest of the introductions; all right? So,
23 Mr. Rhodunda.

24 MR. RHODUNDA: Good morning, Your Honor. Yes,
25 I'm here on behalf of the City of Rehoboth Beach;

1 Mr. Ferrese, acting as City Manager. Mr. Walter Speakman is
2 to my immediate right.

3 MR. SPEAKMAN: I'm a City Solicitor, Your Honor.

4 THE COURT: All right. Thank you, Mr. Speakman.
5 Okay. Go ahead.

6 MR. SCHILTZ: Your Honor, I think the first
7 order of business is a little housekeeping. We'd ask the
8 witnesses be sequestered, and some of the defendants'
9 witnesses remain in the courtroom.

10 THE COURT: Okay. While we're going to take
11 evidence, do you have a position, Mr. Rhodunda?

12 MR. RHODUNDA: We don't object to that, Your
13 Honor.

14 THE COURT: All right.

15 MR. SPEAKMAN: You have to leave.

16 (Sequestered witnesses leave courtroom.)

17 MR. SCHILTZ: The second order of housekeeping,
18 Your Honor, is a witness that the plaintiffs intend to
19 present testimony regarding, Melissa Cargnino,
20 C-A-R-G-N-I-N-O. She is an attorney, Your Honor. She had a
21 commitment this morning, but my understanding is she is
22 going to make it here as fast as humanly possible. We
23 expect her hopefully between 11:30 and 12:00. She has
24 approximately five minutes at most of testimony to give.
25 She had another commitment and on such short notice, she

1 could not break it.

2 THE COURT: I understand. You are the folks
3 who asked for an expedited an emergency hearing so we're
4 accommodating you and your client. And if it's possible for
5 us to take her evidence, I think we want to do that but I'm
6 not going to make everybody stay for -- we'll just see how
7 things go. If we're done and we wrap the hearing, we wrap
8 the hearing.

9 MR. SCHILTZ: I understand, Your Honor.

10 First of all, we wanted to thank the Court for
11 scheduling this on such short notice. We recognize it's an
12 imposition.

13 Your Honor, we're obviously here, would you want
14 a short opening, Your Honor, or would you rather move
15 straight to the evidence?

16 THE COURT: No, I read your papers so let's go
17 ahead and get to the evidence.

18 MR. SCHILTZ: Very well, Your Honor. Plaintiffs
19 call their first witness, Robert Sokolove.

20 THE COURT: Okay.

21 - - -

22 PLAINTIFFS' TESTIMONY

23 ... ROBERT D. SOKOLOVE, having been placed
24 under oath at 10:09 a.m. as a witness, was
25 examined and testified as follows

Sokolove - direct

1

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2

THE WITNESS: Good morning, Your Honor.

3

DIRECT EXAMINATION

4

BY MR. SCHILTZ:

5

Q. Mr. Sokolove, where do you reside?

6

A. 4 Norfolk Street, Rehoboth Beach, Delaware.

7

Q. Does Rehoboth Beach have an upcoming election?

8

A. Yes, sir.

9

Q. What the date?

10

A. August 13th of this year.

11

Q. Are you running for office in that election?

12

A. Yes, sir.

13

Q. For what office?

14

A. Mayor.

15

Q. Can you tell me who your opponent is?

16

A. Sam Cooper. He is the incumbent.

17

Q. How long has he been an incumbent?

18

A. Fifteen years.

19

Q. Have you taken any steps to advertise your candidacy?

20

A. Yes, sir, I have.

21

Q. Can you tell me how?

22

A. I've done a number of things. We have a mailer that

23

has gone out to some individuals, but that's kind of hit or

24

miss because it's a beach community so you are not quite

25

sure whether you hit people at home or whether they're at

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1 their beach house.

2 We have done some door-to-door campaigning, but
3 again that I somewhat hit or miss. And perhaps of
4 significance I guess to this case, we've purchased and
5 placed signs, campaign signs on various parts of the
6 community.

7 Q. Can you describe those signs?

8 A. They're yellow background, blue writing. Mine say
9 Bob Sokolove For Mayor. They're about two feet by -- about
10 two feet by two feet. They stand about two and-a-half to
11 three feet off the ground, depending on how deep you get
12 them into the ground. They're on a little metal post. I
13 guess that describes them.

14 Q. Do any of the signs that you purchased have anything
15 other than Robert Sokolove for Mayor?

16 A. Yes, there are other signs, Your Honor, that have
17 three candidates names on them that say Bob Sokolove For
18 Mayor, David McCarthy and Bill Shields For Commissioner.
19 So, in other words, some of the signs are just mine, some of
20 the signs have all three of our names and there are yet
21 another set of signs that have only Bill Shields' name on
22 them and another set that have only David McCarthy's name on
23 them.

24 Q. And, sir, when you refer to Mr. McCarthy and
25 Mr. Shields, those are the other individual plaintiffs in

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1 this matter?

2 A. Yes, sir.

3 Q. And they are running in connection with the August
4 13th election?

5 A. That is correct.

6 Q. And the office again that they're running for?

7 A. They're running for Commissioner.

8 Q. How many seats are open for City Commissioner?

9 A. There are two seats open for Commissioner.

10 Q. Who are their opponents?

11 A. There is an individual by the name of Ron Patterson
12 and another gentleman by the name of Dennis Barbour.

13 Q. Are Mayor Cooper, Mr. Barbour and Mr. Patterson
14 affiliated in any manner to the best of your knowledge?

15 A. I suppose in an informal sense. However, various
16 entities, there is a group in town called Save Our City.
17 They have taken out, for example, full page advertisements
18 in the local newspapers and they support the three of them
19 as a slate. Virtually every set of campaign signs -- not
20 every but the vast majority of campaign signs on various
21 properties where you see one of their signs, you see all
22 three. So you will see a Barbour, a Patterson and a Mayor
23 Cooper sign, three different colors, three different types
24 of signs all located together throughout the city.

25 Q. Has Mayor Cooper endorsed the two candidates -- I

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1 apologize. Is it Mr. Barbour?

2 A. Barbour. B-A-R-B-O-U-R.

3 Q. And Mr. Patterson. Has Mayor Cooper endorsed either
4 of those candidates, to the best of your knowledge?

5 A. I haven't heard much from Mayor Cooper at all but the
6 other two have endorsed the Mayor and basically in all of
7 their written material and verbal material say they're
8 running under the kind of the platform set out by the Mayor.

9 Q. We're obviously here today about signs in the
10 Rehoboth Beach community. Who placed -- strike that. And
11 you've testified that your campaign signs and the campaign
12 signs of Mr. McCarthy and Mr. Shields are placed in the
13 community. Who placed those signs?

14 A. Various individuals placed them. Sometimes it's the
15 homeowner themselves or a shop owner, but the vast majority
16 of the signs in question in this case that have been taken,
17 I personally put in the ground.

18 Q. When did you place -- and it's a poor question.
19 Strike that again. When was the first time you placed signs
20 in the ground?

21 A. Well, the first time signs went in the ground in the
22 city would be approximately three and-a-half weeks ago.
23 That would be the very first time that signs were put in the
24 ground in various locations around the city. However, the
25 vast majority of them went in approximately July 5th on.

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1 Q. The signs that you generally described as being at
2 issue here today, did those signs go in about that time?

3 A. Yes, sir.

4 Q. Can you tell me where those signs were placed?

5 A. Well, I began -- my wife and I own a restaurant on
6 Lake Avenue in Rehoboth Beach. Lake Avenue is a fairly --
7 especially in the summer, it's a fairly heavily travelled
8 thoroughfare because it actually gets you out on the main
9 drag, Rehoboth Avenue easier than having to go through
10 Rehoboth Avenue so it kind of bypasses. Since our
11 restaurant is right there, since we know the ladies that own
12 three properties down the street, we know a whole series of
13 business and commercial and residential property owners up
14 and down Lake Avenue. So the vast majority of the signs
15 that are at issue today were in and around Lake Avenue and
16 some surrounding public areas at the end of Lake Avenue.

17 Q. To the best of your ability, could you describe the
18 public areas that you are referring to, Mr. Sokolove?

19 A. Yes. The public areas really come in, I suppose,
20 three different categories. One is what the City is calling
21 their right-of-way or in some instances they're calling it
22 City property. It's areas along the street that go between
23 the street up to the point of what you might call someone's
24 front walk. So you have the street, then the curb, then you
25 have the grassy area, then you have the sidewalk, then you

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1 have the grass again.

2 Many of the signs at issue that I put up went up
3 to the grassy area, the main part of the front lawn. Other
4 signs that we're talking about were placed in the -- some, I
5 actually placed right in the front yard of the properties
6 themselves, in the middle of the yard. Clearly, private
7 property.

8 THE COURT: Let me stop you. It's my
9 understanding, you say when signs were removed, they were
10 removing signs from private property?

11 THE WITNESS: Yes, sir, in addition to public.
12 Yes, sir.

13 THE COURT: Give me an estimate of how many of
14 the signs were taken.

15 Sorry to take over here --

16 MR. SCHILTZ: No, Your Honor.

17 THE COURT: -- but I have question I have to be
18 specific about.

19 How many signs total were taken? And I
20 understand there were two occasions so give me of the first
21 one.

22 THE WITNESS: The total number, so far, would
23 approximate about 35 signs. Some of those signs were taken,
24 removed to the City, the City Offices. I got them back, put
25 them up again and then they were taken again. So the large

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1 number would be approximately 35. Of those, I can give you
2 virtually an exact number, Your Honor.

3 One, two, three, four, five, six -- at least six
4 of the signs. And some, on two occasions, were taken
5 directly off of private property.

6 THE COURT: All right.

7 THE WITNESS: Including my own.

8 THE COURT: Okay. Tell me, there are six
9 properties. Describe to me those six properties.

10 THE WITNESS: There weren't six properties.

11 MR. SCHILTZ: Your Honor, I apologize for
12 interrupting. I have an exhibit which may help the Court,
13 parties and the witness with respect to this.

14 THE COURT: Good.

15 MR. SCHILTZ: For the record, Plaintiffs'
16 Exhibit 1. Your Honor, this is information that was
17 compiled from the Answers to Interrogatories that we
18 provided to the defendants yesterday.

19 THE COURT: All right.

20 MR. SCHILTZ: May I approach, Your Honor?

21 THE COURT: You may freely approach.

22 (Documents passed forward.)

23 MR. SCHILTZ: And for the record, Plaintiffs'
24 Exhibit 1 relates to what I'll call the first instance of
25 removal, Your Honor.

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1 THE COURT: Okay. This is Plaintiffs' 1 for
2 identification; right?

3 MR. SCHILTZ: Obviously, Your Honor. Correct.

4 BY MR. RHODUNDA:

5 Q. Mr. Sokolove, can you identify what Plaintiffs'
6 Exhibit 1 is?

7 A. Yes, it's a list of the campaign signs, most of which
8 had just my name on them, some of which also included the
9 other two candidates, Mr. Shields and Mr. McCarthy. This is
10 a list of the signs that were taken some time prior to 11:00
11 a.m. on Saturday, July 9th, 2005.

12 MR. SCHILTZ: Your Honor, Plaintiffs' Exhibit 2
13 for identification.

14 (Documents passed forward.)

15 BY MR. SCHILTZ:

16 Q. Mr. Sokolove, can you identify the information on
17 Plaintiffs' Exhibit 2?

18 A. Yes, sir. These are -- this is a list of the
19 campaign signs that were taken between 6:00 p.m. and 11:30
20 p.m. on that same Saturday, July 9th.

21 Q. Okay. Mr. Sokolove, I want to back up a little bit
22 before we get into more detail about the removal of those
23 signs and their placement?

24 Prior to the placement of your campaign signs,
25 the campaign signs identified on Plaintiffs' Exhibit 1 and

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1 Plaintiffs' Exhibit 2, did you or any of your
2 representatives have any communications with the City of
3 Rehoboth regarding placement of signs?

4 A. Yes.

5 Q. Can you describe that, please?

6 A. Well, we were concerned that in a very, very short
7 election period; and again particularly because it's hit
8 and miss trying to reach voters in a beach community like
9 Rehoboth Beach, you can reach a lot of people but not
10 necessarily voters. So we were very concerned that there
11 would be any location whatsoever that the City would deem
12 inappropriate as a location for placement of signs. So we
13 hired an attorney, who was also assisting also on other
14 campaign matters, such as working with, you know, the
15 financial side, making sure the filings are correct for the
16 campaign, donations that came in. We asked this attorney to
17 please contact the City Manager's Office to determine where,
18 if anywhere, the City believed or deemed it inappropriate to
19 place campaign signs.

20 Q. And what response did you receive?

21 A. The response was that there was only one place in the
22 City that the City would prefer, not mandated but that we
23 not place campaign signs and that was right down the middle
24 of Rehoboth Avenue. And there was even a rationale given
25 for that, and that is because under the new streetscape

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1 program that went in, there are a series of new plantings
2 down the middle, down the median strip, and we were told
3 that the City would prefer that we not put our signs there
4 because it could impact the new landscaping that was there.

5 Other than that, we were absolutely given no
6 restriction anywhere else in the City. None.

7 Q. Do you know if Mr. Murphy made any -- excuse me --
8 Mr. Ferrese made any representations regarding whether the
9 City would remove the signs?

10 A. At that time, no. There was no representation
11 whatsoever.

12 THE COURT: Well, who made the representation?
13 You said the City came back and said. Do you know who?

14 THE WITNESS: Mr. Ferrese had a discussion with
15 our attorney, Melissa. I cannot pronounce her last name.

16 BY MR. SCHILTZ:

17 Q. Cargnino?

18 A. That would be the attorney, yes.

19 THE COURT: All right.

20 BY MR. SCHILTZ:

21 Q. Mr. Sokolove, you mentioned that you own a restaurant
22 with your wife on Lake Avenue; is that correct?

23 A. Yes, sir.

24 Q. When did you purchase that restaurant?

25 A. In October. The actual purchase took place in

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1 October of 2004.

2 Q. Have you renovated the restaurant?

3 A. Yes.

4 Q. Did you talk to the City priority renovating your
5 restaurant?

6 A. Absolutely.

7 Q. What did you talk to them about?

8 A. Well, there were a lot of questions. It was an
9 existing building and Lake Avenue is a very, it's a very
10 complex street from a land-use standpoint. You have both
11 business and residences on a street. You have some areas
12 where there are sidewalks. You have some areas where there
13 is no sidewalks. You have utility poles that are on both
14 sides of the street across. It was very unclear to us as we
15 were getting ready to renovate what land we even owned.

16 But, more importantly, Your Honor, there has
17 been for some time a proposed Lake Avenue redevelopment
18 plan, a plan to fix the street up. And I was told that it
19 would involve new street, new curbs, new gutters perhaps and
20 one of my concerns, having nothing to do with this election
21 because I had no anticipation for running for anything at
22 this time, was if we did some work to the front of the
23 building, would it be impacted by any renovations on the
24 street?

25 In that context, I had at least one and I'm not

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1 certain, there may have been a second discussion with David
2 Murphy who is the Chief Building Inspector for the City.
3 And my primary concern in discussing the street with Mr.
4 Murphy was, what land do I own? Where can we come out to?
5 Where do we come out to? What could we expand out to the
6 front? What couldn't we expand?

7 And one comment that struck me then in the
8 context of the restaurant was Mr. Murphy said, to use his
9 words, he said, quote, it's a really screwed up street. And
10 I'd said, what do you mean? He said, well, you've got
11 certain areas on the street where it would appear that the
12 properties come out into the street. You have other areas
13 where perhaps even a parking meter may be up on private
14 property. As he put it to me, it's very unclear. It's very
15 difficult to tell on the street where the property lines
16 are.

17 And that was in the context not of my campaign,
18 which hadn't crossed my mind, it was in the context of the
19 street itself.

20 THE COURT: All right. I want to interrupt
21 again, Mr. Schiltz.

22 Is there more foundation you think you need for
23 those two documents?

24 MR. SCHILTZ: No, Your Honor. I'd like to move
25 them into evidence.

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1 MR. SPEAKMAN: No objection, Your Honor.

2 THE COURT: All right. They're admitted without
3 objection.

4 * * * (Plaintiffs' Exhibit Nos. 1 and 2 were received
5 into evidence.)

6 THE COURT: I want to ask a couple things about
7 them.

8 MR. SCHILTZ: I was getting there ultimately,
9 Your Honor, but you are welcome to proceed at your --

10 THE COURT: All right. First, what is the 59
11 Lake Avenue? What is that address?

12 THE WITNESS: The restaurant is called 59 Lake,
13 and it's located on 59 Lake Avenue.

14 THE COURT: So that is your restaurant; right?

15 THE WITNESS: Yes, sir.

16 THE COURT: I'm not sure I understand your
17 testimony. What is your testimony with respect to small
18 roman numeral one and small roman numeral two in the list
19 of properties on Plaintiffs' Exhibit 1 and Plaintiffs'
20 Exhibit 2? Are you saying that these signs were on your
21 property or not on your property?

22 THE WITNESS: If you go to the roman numeral
23 one, where it says the four signs removed, they were
24 clearly, in roman numeral one, those are on my property.

25 THE COURT: All right.

Sokolove - direct

1 THE WITNESS: And as to roman numeral two, I
2 believe that they're on my property. The City, I think,
3 believes that they were in the public right-of-way so it's,
4 it's unclear. It's even unclear who owns the property. I
5 think they're on mine but perhaps I'm wrong.

6 THE COURT: All right. Any other of the
7 properties listed on here where you feel confident that
8 signs were on private property?

9 THE WITNESS: Yes, sir. Excuse me. Let me make
10 sure I'm correct here. Actually, on this list, the answer
11 would be no.

12 THE COURT: Okay.

13 BY MR. SCHILTZ:

14 Q. Well, just for clarity on the record, when you say
15 this list, which list are you referring to? Which exhibit
16 number?

17 A. Well, either exhibit.

18 THE WITNESS: I'm sorry. I'm wrong. I'm
19 wrong, Your Honor. If you go to Exhibit 1, here it is. If
20 you go to Exhibit 1, roman numeral 4, 1-B, where it says two
21 signs removed, one from the property owner's front lawn, and
22 roman numeral five as well -- three, four and five. Those
23 are where they were taken directly from the front lawn.
24 They were put smack in the middle of the yard between the
25 sidewalk and the building.

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1 Now, that was the earlier removal. I kind of
2 ran out of signs later that day. They didn't go back there
3 later that day.

4 THE COURT: So you got your signs back from the
5 City but you decided not to put them back in the same
6 location?

7 THE WITNESS: Well, what had happened is in the
8 interim, the owners themselves had obtained, I'm not sure
9 from where, but had obtained three more of my signs and they
10 already had put them up in their front yards again but
11 closer back up against their own buildings. So by placing
12 them back in the middle of the yard, that would have been
13 three signs per yard and I thought that was a bit much. A
14 little bit of an overkill.

15 THE COURT: All right. Thanks.

16 Mr. Schiltz.

17 BY MR. SCHILTZ:

18 Q. I want to focus your attention back on your
19 conversation with Mr. Murphy when you were dealing with your
20 renovations briefly. As I understand your testimony, he
21 told you that the property lines on Lake Avenue were not
22 consistent; is that correct?

23 A. I don't know if he used that word but that was the
24 meaning. What he was saying is it was difficult to
25 determine where the property lines were at times because

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1 sometimes a sidewalk would begin, then it wouldn't be there,
2 then it would pick up on the next property but not on a
3 parallel line.

4 Q. Did you have a sense of what documentation, if any,
5 Mr. Murphy was relying upon to reach that, make those
6 statements?

7 A. My conclusion was that he was relying on various
8 pieces of documentation, property survey lines and perhaps
9 information that the City culled from its own records.

10 MR. SCHILTZ: I don't want to belabor the point,
11 Your Honor. If Your Honor has a clear understanding of
12 which signs we're contending were removed from private
13 property and which were from public right-of-way, I won't go
14 back through these Exhibits 1 and 2.

15 THE COURT: Well, I think I understand the
16 witness's testimony. If you think there is something more
17 you need to elicit, that's fine.

18 MR. SCHILTZ: Your Honor, at this time I'd like
19 to mark Plaintiffs' Exhibit 3.

20 (Documents passed forward.)

21 BY MR. SCHILTZ:

22 Q. Mr. Sokolove, can you identify Plaintiffs' Exhibit 3?

23 A. Yes. It is an article in the Cape Gazette which is
24 the primary for pay. There is two newspapers, Your Honor,
25 that are local newspapers. The Coast Press and the Cape

Sokolove - direct

1 Gazette. The Cape Gazette is the local publication which,
2 while you don't subscribe, you pay to receive and it's an
3 article that is in that newspaper on or about 7/12 of this
4 year.

5 Q. Mr. Sokolove, can you turn to the second page of that
6 exhibit?

7 A. Yes, sir.

8 Q. The very bottom of the second page, there is a
9 reference to an individual named Inez Conover. I-N-E-Z
10 C-O-N-O-V-E-R?

11 A. Yes.

12 Q. Do you see that reference?

13 A. I do.

14 Q. Who is Inez Conover?

15 A. She and her partner, Kathleen Bailey, own three older
16 Victorian-type houses just down the street on Lake Avenue
17 from my restaurant. They are the owners of three bed and
18 breakfasts located within those properties and each one has
19 a cute little; namely, Seawitch, Bewitched and Bedazzled.

20 Q. Are those the bed and breakfasts that are referenced
21 at Roman three, four and five on Plaintiffs' Exhibit 1 and
22 Plaintiffs' Exhibit 2?

23 A. Yes, sir.

24 Q. And you see there that she is quoted as saying --

25 THE COURT: Well --

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1 MR. SCHILTZ: Your Honor --

2 MR. RHODUNDA: The article speaks for itself.

3 MR. SCHILTZ: Your Honor, I move it to be
4 admitted.

5 THE COURT: Go ahead. Yes?

6 MR. SCHILTZ: I move for its admission.

7 THE COURT: Okay. And do you have a position on
8 whether this article should or could be admitted or not,
9 Mr. Rhodunda? Do you have an objection?

10 MR. RHODUNDA: I'm sorry, Your Honor.

11 THE COURT: He has moved the article as
12 Plaintiffs' 3. Do you have an objection?

13 MR. RHODUNDA: We don't, Your Honor. No.

14 THE COURT: No objection. It's admitted without
15 objection.

16 * * * (Plaintiffs' Exhibit No. 3 was received into
17 evidence.)

18 MR. SCHILTZ: Thank you, Your Honor.

19 BY MR. RHODUNDA:

20 Q. Let's get to the heart of the case, Mr. Sokolove.

21 Were there other candidates signs close to any of the signs
22 that are identified or -- strike that.

23 Tell me the proximity of any candidates signs to
24 any of the signs that were removed in Plaintiffs' Exhibit 1
25 and Plaintiffs' Exhibit 2.

Sokolove - direct

1 A. Well, there are, Your Honor, throughout the city but
2 specifically in an around Lake Avenue, there are the kind of
3 incumbent slate that -- well, not the incumbent. The Mayor
4 and Mr. Patterson and Mr. Barbour's three signs as a group
5 located in various places throughout the city that are in
6 generically exactly the same kind of locations as where my
7 signs were taken. So, in other words, where my signs may
8 have been, you know, near the street where it meets grass,
9 because there is no sidewalk, I had signs taken right off of
10 Lake Avenue in those circumstances.

11 Even today, this morning, I rode by at least,
12 just on my way out to my house, two sets of their signs that
13 are in exactly the same type of location.

14 There are signs that are in an area outside of
15 the -- it's a hair salon establishment on at least three
16 occasions but two that I know of for certain. The City took
17 my signs right out of the landscaping of that establishment.
18 It's clearly their land. They care for it. They have a
19 little rock wall that they built and all these plantings.
20 They even have a little fountain. One of my signs was in
21 there, it was taken.

22 Yet as I rode by this morning, I found a
23 Mr. Patterson, a Mr. Barbour and a Mayor Cooper sign sitting
24 in landscaping in exactly the same kind of proximity to
25 where my signs were, only theirs remain. Up and down --

Sokolove - direct

1 THE COURT: In different properties, you are
2 saying?

3 THE WITNESS: In different properties, exactly
4 the same kind of situation. So, in other words, wherever my
5 signs were taken, for whatever theory, whether it's public
6 property, private property, right-of-way, in landscaping,
7 on the grass, mine were summarily and regularly taken, the
8 theory being -- well, whatever the theory was. Whereas even
9 as we sit here today, those same exact locations are being
10 used by the Mayor in other signs.

11 THE COURT: Are you saying the same exact
12 location? Because you shifted.

13 THE WITNESS: I'm sorry. The same type. I
14 misspoke. The same type of location. However, there are
15 even instances right on Lake Avenue where, in the same area
16 adjacent to the street, their signs are there right now,
17 mine were taken from there right on Lake Avenue.

18 THE COURT: All right.

19 BY MR. SCHILTZ:

20 Q. Can you tell the Court where that was?

21 A. That is right at the end of Lake Avenue, right before
22 it reaches Rehoboth Avenue. There is -- I'm sorry. There
23 is a --

24 THE COURT: Let me ask you this. Let me
25 interrupt you and say take a look at Plaintiffs' 1 and

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1 Plaintiffs' 2.

2 THE WITNESS: Yes, sir.

3 THE COURT: And tell me what, whether you can
4 tell me in relation to any of these listed locations,
5 whether they're signs for Mayor Cooper or the two candidates
6 for City Commissioner?

7 THE WITNESS: No. On these locations, Your
8 Honor, there were not primarily because, for the most part,
9 these are private properties and the owners, maybe one
10 of them, by the way, would not prefer to have the other
11 candidate signs. So, in other words, these, Plaintiffs'
12 Exhibit No. 1 and 2 are not good examples of situations
13 where the signs are in exactly same location.

14 THE COURT: All right. Then go ahead and
15 describe for me where it is that your signs were moved then,
16 Mayor Cooper's or the City Commissioner signs, candidates
17 for City Commissioner campaign signs are now on display.

18 THE WITNESS: Well, for example, right at the
19 end of Lake Avenue, right where it meets close to Rehoboth
20 Avenue, their signs are sitting right out near the street.
21 The same exact scenario where my signs were a little further
22 down Lake Avenue right outside my restaurant, exactly the
23 same scenario. There are situations throughout the city
24 where you will see their signs sitting in a landscaping
25 area.

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1 THE COURT: What do you mean? You need to be
2 very precise with me.

3 THE WITNESS: Yes, sir. One example, I believe
4 it's on Stockley Street, there are signs that have all three
5 candidates that are literally just inside. You go from the
6 street to the grassy area to the sidewalk. Then you go to
7 the grass in the yard. And there will be, for example, a
8 landscape timber, and right there abutting the landscape
9 timber will be a sign of the Mayor, Mr. Patterson and
10 Mr. Barbour. Conversely -- and they stay there. They're
11 still there now.

12 Conversely, on that same street, I had a sign
13 literally across the street in the same type of location,
14 you go from the street to the curb to the sidewalk -- I'm
15 sorry -- the grassy area to the sidewalk, to the other
16 grassy area, and inside the landscaping, I had my sign.
17 That was removed. I am told it was removed because it's in
18 the right-of-way.

19 I do not understand the decision. There is no
20 distinction.

21 THE COURT: All right.

22 BY MR. SCHILTZ:

23 Q. Focusing on the first time your signs were removed by
24 the City of Rehoboth, can you tell me how it was you learned
25 that the signs were removed?

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1 A. The first time, the restaurant owner who actually
2 parks his car behind the municipal center, he apparently has
3 I guess a leased spot behind the municipal center, happened
4 to be walking to his car on Saturday morning. And as he
5 walked by the City Services Building that includes some
6 pickup trucks for the Code Enforcement Officers area, he
7 looked in the back of the truck and he just happened to
8 notice a large pile of my signs sitting in the back of the
9 City truck. He, this individual, then called Mr. Hill who
10 is somebody who has been working with us.

11 MR. RHODUNDA: Excuse me, Your Honor, just for a
12 moment. If the witness could maybe speak closer to the
13 microphone?

14 THE WITNESS: I'm sorry. I didn't want to talk
15 too loud into it.

16 A. He then called Mr. Hill, who he knew was working with
17 the campaign. Mr. Hill, in turn, went out to the site and
18 observed the signs, called me and called the Rehoboth Beach
19 Police.

20 BY MR. SCHILTZ:

21 Q. Can you give me Mr. Hill's full name?

22 A. Joseph Hill.

23 MR. SCHILTZ: Your Honor, I'd like to approach
24 with Plaintiffs' Exhibit 4. I do not have copies of these.
25 They are photographs and given the nature of this

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1 proceeding, we weren't able to get duplicates in such short
2 notice, Your Honor. I will --

3 THE COURT: Show them to oppose counsel first.

4 MR. SCHILTZ: -- show them to opposing counsel.

5 (Counsel reviews photographs.)

6 THE WITNESS: Your Honor, may I get some water?

7 THE COURT: Sure.

8 THE WITNESS: Thank you.

9 MR. RHODUNDA: Your Honor, we have no objection
10 to the admission of the photographs.

11 THE COURT: All right. What do you have them
12 marked as?

13 MR. SCHILTZ: Plaintiffs' Exhibit 4, Your Honor.

14 THE COURT: Collectively?

15 MR. SCHILTZ: They are Plaintiffs' Exhibit 4,
16 yes.

17 THE COURT: You do need to -- why don't you do
18 me a favor and admit them separately as 4 A-B-C, separately.
19 You might mark them on the back, okay?

20 MR. SCHILTZ: Yes, Your Honor.

21 THE COURT: Thanks.

22 MR. SCHILTZ: For the record, they're 4-A
23 through 4-E.

24 THE COURT: Thank you.

25 THE WITNESS: Your Honor, do you want these

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1 exhibits or should I leave them here?

2 THE COURT: Just hold on to them, if you would,
3 sir.

4 MR. RHODUNDA: Your Honor, if it will help, we
5 will stipulate that we took down signs.

6 THE COURT: I don't know that that will help but
7 I'm glad to have that on the record. As of right now, I'm
8 trying to figure out exactly where these signs were.

9 MR. RHODUNDA: Exactly. The pictures speak for
10 themselves. They're in the back of the truck. We stipulate
11 we took signs down.

12 THE COURT: All right.

13 BY MR. SCHILTZ:

14 Q. Can you describe those pictures, sir, what they
15 represent?

16 A. Yes, Your Honor. These were pictures that were
17 taken during the late morning of July 9th. They are each
18 photographs of my signs and signs of Mr. McCarthy and Mr.
19 Shields in the back of the Rehoboth Beach Building
20 Inspector's truck. The signs that are in the back are the
21 signs that indeed were taken off of my property, the
22 properties of the three bed and breakfasts that I described
23 earlier. They're basically the signs or some of the signs
24 that were taken up and down Lake Avenue on the morning of
25 July 9th.

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1 THE COURT: All right.

2 BY MR. SCHILTZ:

3 Q. Did you retrieve those signs from the City, sir?

4 A. Yes, I did.

5 Q. Were there any other signs in the back of the vehicle
6 when you retrieved your signs?

7 A. On this particular day, there were a couple. In
8 fact, I think one of the photographs, you can see it
9 slightly. There were a couple of old -- there was an old
10 realtor sign that was rusted in the back of the truck that
11 I was told by a City person that has been there for awhile.

12 Q. Were there any other political candidates signs mixed
13 in with yours, sir?

14 A. No, sir.

15 Q. You mentioned that the police were called in
16 connection with the incident; is that right?

17 A. Yes, sir.

18 Q. Did the police prepare a report that you received?

19 A. Yes, they did.

20 MR. SCHILTZ: Marking Plaintiffs' Exhibit 5 for
21 identification.

22 (Documents passed forward.)

23 MR. RHODUNDA: I intend to object to this
24 document unless the plaintiffs would like to call testimony
25 on all these issues rather than testimony be heard and not

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1 just an official police report be admitted.

2 THE COURT: So I understand you to be making a
3 hearsay objection.

4 MR. RHODUNDA: Yes.

5 THE COURT: All right. We have a hearsay
6 objection.

7 MR. SCHILTZ: Your Honor, it's in my opinion
8 it's a statement of a party opponent and it's admissible.

9 THE COURT: Well --

10 MR. SCHILTZ: It's made --

11 THE COURT: This statement may be of a party
12 opponent but whose statement is on here? In other words, if
13 I understand Mr. Rhodunda's objection, it wasn't to the fact
14 that this police officer, whose name I guess is Patrolman
15 Cleveland, could say what the witness said. It's that
16 Patrolman Cleveland isn't here to say it. Have I got you
17 right? Did I understand your objection?

18 MR. SPEAKMAN: Yes, Your Honor.

19 MR. SCHILTZ: But, Your Honor, I believe it's
20 statement of a party opponent and therefore it's admissible
21 on that basis.

22 THE COURT: Okay. I'm not getting people to
23 meet head on.

24 MR. SCHILTZ: No, I --

25 THE COURT: The assertion is not that Patrolman

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1 Cleveland, were he on the stand, couldn't say what he heard
2 directly, it's that Patrolman Cleveland isn't on the stand.
3 So you've got two layers of hearsay.

4 MR. SCHILTZ: I understand. What you are
5 suggesting, it's not admissible to prove the truth that
6 Mr. Ferrese said what he said. However --

7 THE COURT: I'm not suggesting it. That's what
8 your opponent is saying.

9 MR. SCHILTZ: Well, I'm not -- Your Honor, first
10 of all, I believe it can be admitted to show the state of
11 mind of Officer Cleveland who obviously is the individual
12 and who took the report. And it also frankly can be
13 admitted to show the state of mind of my client, Your Honor,
14 and what his understanding is of whether or not it was
15 appropriate to remove these signs.

16 THE COURT: Why is the state of mind of the
17 patrolman or of your client relevant?

18 MR. SCHILTZ: Well, Your Honor, they're being
19 offered not for the truth of the matter asserted but for the
20 state of mind of my client which is an exception to the
21 hearsay rule.

22 THE COURT: I'm not disagreeing. I'll asking
23 you --

24 MR. SCHILTZ: So now you're asking why --

25 THE COURT: I'm asking why it's relevant. In

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1 other words, what is relevant about this except for the
2 truth of the matter? If you can tell me that, that would
3 help.

4 MR. SCHILTZ: It's relative to -- one moment,
5 Your Honor. I apologize.

6 THE COURT: Sure.

7 (Counsel confer.)

8 MR. SCHILTZ: Your Honor, I do note that the
9 defendants have a police report that they are going to try
10 to introduce, I assume, and --

11 THE COURT: I don't know.

12 MR. SCHILTZ: I will withdraw.

13 THE COURT: I guess we'll deal with that when we
14 deal with that.

15 MR. SCHILTZ: Your Honor, I think the entire
16 document, first of all, is relevant to show what transpired
17 that morning, clearly. And that is clearly relevant to
18 these proceedings. It's not being offered for the truth of
19 the matter asserted, but --

20 THE COURT: All right. You know what? I'm
21 sustaining the objection because when you state the document
22 is relevant to what had transpired that morning, what you
23 are telling me is the truth of the matter asserted is what
24 is significant. So without Patrolman Cleveland here, you
25 have one layer of hearsay you are not getting through and

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1 you are not giving me an exception to the hearsay rule that
2 would get you through it, so I'm sustaining it. Of course,
3 that doesn't prevent you, sir, from using this document in
4 cross-examining Mr. Ferrese, if you choose to do that.
5 So it's not that this document doesn't have any utility
6 but I will sustain the objection to it being admitted
7 as a substantive piece of evidence based on the hearsay
8 objection.

9 Okay. Please proceed.

10 BY MR. SCHILTZ:

11 Q. Mr. Sokolove, in the days after your signs were
12 removed, did you have discussions with City representatives
13 regarding their removal?

14 A. Yes, I did.

15 Q. And who did you speak with?

16 A. Well, the day of the removal, I actually spoke to the
17 individual who acknowledged that he removed the signs. That
18 would be Mr. Walter Onizuk who is the City's Code
19 Enforcement Officer. And subsequent to that, I spoke to Mr.
20 Murphy who is the Chief Building Inspector for the City. I
21 spoke to Detective O' Bier, O-'-B-I-E-R. I spoke to
22 Patrolman Cleveland. I believe her first name is Sally
23 Cleveland. I spoke to -- I guess that's who I spoke to
24 within the City.

25 Q. Did you ever speak to the Chief of Police?

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1 A. Yes. I'm sorry. And the Chief of Police.

2 Q. And what is his name?

3 A. His name is Keith Banks.

4 Q. Can you tell me circumstances under which you spoke
5 to Mr. Onizuk?

6 A. Well --

7 THE COURT: I'm sorry to interrupt. You know
8 what? I want to go back to this document and I want to take
9 a break long enough for us to look at the public records
10 exception to Rule 803. Usually police reports come up in
11 the context of criminal cases but sometimes in a personal
12 injury case. Let me read you the exception. It says:

13 Records, reports, statements or data compilation
14 in any form of public offices or agencies setting forth the
15 activities of the office or agency or matters observed
16 pursuant to duty imposed by law as to which matters there
17 was a duty to report, excluding, however, in criminal cases
18 matters observed by police officers and other law
19 enforcement personnel.

20 MR. SCHILTZ: Your Honor, I ask that it be
21 admitted pursuant to that exception to the hearsay rule and
22 thank you for the citation.

23 THE COURT: Do you have a position on that,
24 Mr. Rhodunda?

25 MR. RHODUNDA: Your Honor, we're not going to

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1 object. We'll put in our police report. The whole police
2 report can come in. That's not a problem. Actually, just
3 from a perspective of where we're going today, we certainly
4 look forward to speaking with the witness. And I just don't
5 know, has the Court allotted the entire day or more for this
6 hearing? Because the more they go into all this extraneous
7 stuff we think the longer we'll be here. That's fine, but I
8 don't know what the Court allotted to this since we were
9 weren't really advised of that.

10 THE COURT: Well, yes, I haven't allotted a
11 whole day, I can't give you the whole day but I have got and
12 will plan to give you until at least 1:00 o'clock to try to
13 get a full record here. And I'm hoping three hours is
14 enough to get the record here.

15 MR. SCHILTZ: I understand.

16 THE COURT: If we need to deal with time
17 constraints -- here is the short of it. I'm not going to
18 make a decision without you having an opportunity to put
19 the evidence on you think is important for your client,
20 Mr. Rhodunda.

21 MR. RHODUNDA: And they have attached a bunch of
22 affidavits that state these things. If they would like to
23 repeat all that stuff, that's fine, but they have affidavits
24 from their client on a variety of issues and from Mr. Hill
25 on issues. Mr. Ferrese was not -- is going to testify.

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1 They could call him, we could call him. But we do have a
2 substantial amount of evidence we want to put in to counter
3 certainly everything you heard.

4 THE COURT: Then I hear objection is withdrawn.

5 MR. RHODUNDA: Withdrawn, Your Honor.

6 THE COURT: Okay. Exhibit 5 is admitted.

7 * * * (Plaintiffs' Exhibit No. 5 was received into
8 evidence.)

9 BY MR. SCHILTZ:

10 Q. Can you again, sir, describe your circumstances under
11 which you ran into Mr. Onizuk?

12 A. Well, Your Honor, after the morning incident when I
13 was informed that my signs had been taken, they were down at
14 the City Offices, I was able to get them back. I was out
15 trying to campaign that day, got interrupted by that, came
16 back, got my signs back. And then late in the afternoon,
17 right before 6:00 o'clock, given that it was a Saturday, a
18 lot of people in town, I personally went and put those signs
19 and a few more that I had right back out again, right back
20 on Lake Avenue, right on my own property, right on the
21 property of the three bed and breakfasts in very much the
22 same areas that they had been before, because, frankly, I
23 viewed, and I, in talking with the officer, I viewed what
24 had been done as improper, perhaps even illegal, taking them
25 off of my property, so I saw no reason not to. I didn't

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1 hesitate to put them right back where they were. I thought
2 at best it must be a mistake, at worst it's malicious. So I
3 just went, put the signs back at about between 5:30 and just
4 before 6:00 o'clock.

5 Then my valet parking guys, at about 10:30,
6 quarter to 11:00 at night, came into my restaurant and said,
7 as they said, there is a guy out in front from the City in a
8 City truck. He parked right in front of the restaurant and
9 he was going up and down Lake Avenue taking the signs down
10 again, all over again, same signs and a few more.

11 So when I was able to get out of the restaurant,
12 at about 11:30 or so, I had a client in, a gentleman I'm
13 working with out of Memphis. He and I walked on over to the
14 City Offices, Building Inspector's Office, really I thought,
15 I went there just to go pick up my signs again, pull them
16 out of the truck. And I noticed up in what we call or what
17 I call the trailer, which is where they're working out of,
18 one of these modular units, there is a light on.

19 So I knocked on the window and a Mr. Onizuk, who
20 is the Code Enforcement Officer, was there. So I motioned
21 for him to come on out and he did. And it seemed evident to
22 me that there he is, at near midnight now, near his truck
23 and the truck is filled again, even more so than the first
24 time with signs.

25 So I asked Mr. Onizuk, who I know -- I didn't

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1 ask him "did you," I said why did you take all of my signs
2 again? And he said, because I was told to do it. And I
3 said, Walter, why are you doing it? Why are you doing it?
4 And he said, well, because I was instructed to. And I said,
5 well, they're political signs and I see no basis whatsoever
6 for taking my signs. And he said, well, I think there is.
7 So we went into his office and I said, could you just show
8 me on what basis? Why are you taking the signs, please?

9 He then opened up, Your Honor, the code book
10 and he pointed to the section that is designated as to
11 signs and it's a very, very detailed section. It starts
12 with definitions. And it starts with A. And the first
13 sign, my recollection, is advertising. And it defines what
14 an advertising sign is, and then a banner sign, and then a
15 commercial sign, and it goes right through the alphabet.
16 And interestingly what is missing in this whole laundry list
17 of signs, is political signs.

18 And I said to Mr. Onizuk, I said, you know, am I
19 missing something here? Is there a reason where there is a
20 laundry list of signs regulated and defined by the City but
21 not political signs? And his response to me was, well, I
22 guess you are right. I said, why are you taking them then?
23 This is just wrong. This is the second time you have done
24 it now today. Why are you taking them? And he said, well,
25 I was instructed to do it by Mr. Murphy, who is his boss.

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1 And I said, why would Mr. Murphy instruct you to do it? And
2 he said, because Mr. Ferrese told him that that is what
3 needs to be done.

4 So I said to Mr. Onizuk, I said, Walt, it's
5 wrong. You know, it's my opinion that these are, you know,
6 they should be protected by the First Amendment. You are
7 taking them off of public land, you are taking them off of
8 private land, you took them right out of my flower pot and
9 this just has to stop. And he made a comment to me about,
10 well, you know, I guess when you get elected Mayor you are
11 going to fire me. And I said, Walter, come on, that is not
12 what this is about. What this is about is you guys have got
13 to stop taking my signs all over the City. And that is how
14 that discussion went that night.

15 Q. Okay. You've mentioned a couple times right to free
16 speech. Do you have any legal training?

17 A. Yes, sir, I do.

18 Q. What is that?

19 A. I'm a lawyer by training.

20 Q. I'd like to hand the witness what is Plaintiffs'
21 Exhibit 6. Would you identify that for the record, sir?

22 A. Yes, sir. This is Article Seven, Section 270-56
23 which is what is known throughout the City as the signs
24 regulation. And I would, I would point out, for example,
25 when it was time for me to open my restaurant, I sat down

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1 with the City and when it came time to discuss what kind of
2 sign we could place or not place at our restaurant, this was
3 the section.

4 MR. RHODUNDA: I have objection to this exhibit,
5 Your Honor. This is the zoning code that applies to private
6 property, not public property. The ordinance that was being
7 enforced here was regarding public property, so this is
8 really irrelevant. Our position is we took no signs from
9 private property. All the signs we took were from public
10 right-of-ways and public property. This is the zoning
11 ordinance, does not apply to those areas. To the extent
12 they looked at them that night, it's irrelevant to why
13 they're here today.

14 THE COURT: I'll tell you what, I'm going to
15 admit it just because it will be easier for me to have it.
16 The point is it's a legal document. It's an ordinance. It
17 doesn't actually need to be -- make a cite to it and I could
18 have to figure out how to find it.

19 MR. SCHILTZ: I thought it was easier to hand it
20 to your Honor.

21 THE COURT: So just as a matter of convenience,
22 it's not substantive evidence, it's the local code. If it
23 doesn't apply, it doesn't apply and you will have your
24 chance.

25 MR. RHODUNDA: I was hoping to avoid a lot of

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1 dialogue on the zoning code plus private property. If I
2 can't, that's fine.

3 THE COURT: Plaintiffs' 6 is admitted.

4 * * * (Plaintiffs' Exhibit No. 6 was received into
5 evidence.)

6 MR. SCHILTZ: I am trying to --

7 THE COURT: We're now at 11:00 o'clock.

8 MR. SCHILTZ: Your Honor, I am speeding things
9 along.

10 BY MR. SCHILTZ:

11 Q. You have mentioned conversations with Mr. Onizuk, Mr.
12 Murphy, Mr. O'Bier, Officer Cleveland and Officer Banks
13 subsequent to the removal of your signs. During any of
14 those conversations, did any of those individuals point you
15 to any City ordinance which they believed allowed them to
16 remove your signs?

17 A. Ultimately, when I met with Sgt -- I'm sorry --
18 Detective O'Bier, I met with him because he actually called
19 me into his office. He said he is investigating the signs
20 being taken. That was my job, to determine whether, amongst
21 other things, whether any criminal offense had taken place.
22 When I went into his office, he actually pointed to two
23 different things. He pointed to what appeared to be an
24 overall sign ordinance or, I'm sorry, an overall sign ban
25 that made reference to something involving public property.

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1 He said to me that he was told by Mr. Ferrese that this is
2 what controls here. He then handed me -- already
3 preunderlined, I'm not underlining. He had a highlighter
4 and he handed me this highlighted document, Your Honor, that
5 showed how a placement of signs, the improper placement of
6 signs could subject me to fines between \$100 and \$500 per
7 sign that had already been highlighted. And he handed it to
8 me. And I said, detective, I mean, you know, I was here to
9 talk about my signs being taken. Is this -- am I being
10 threatened that I am now going to be fined for putting signs
11 up? And I think his word were something to the effect,
12 well, you know, I was just told to pass this on to you and
13 just kind of left it at that.

14 THE COURT: All right.

15 MR. SCHILTZ: I'm handing the witness
16 Plaintiffs' Exhibit 7.

17 (Documents passed forward.)

18 BY MR. SCHILTZ:

19 Q. Mr. Sokolove, does Plaintiffs' Exhibit 7 contain one
20 of the ordinances you were referring to with respect to
21 conversation with Mr. O'Bier?

22 A. Yes, this is the 74-16 is what he handed to me as the
23 basis for why, I guess the basis for why, my putting up
24 signs, why the City had the right to take my signs down.

25 Q. Did Officer O'Bier or any of other representatives of

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1 the City that you referred to here ever advise you of the
2 manner in which City ordinance Section 74-16 was enforced by
3 the City?

4 A. No, quite the contrary. With anyone, anyone, City
5 officials, non-City officials, past and present, City
6 Commissioners, I have begged, I have asked to try to find
7 out what, what is the policy here? Where is -- how do we do
8 this in the City? What am I doing wrong? Where can I look
9 to? And nobody has been able to advise me how either 74-16
10 has been in the past either enforced or how it's been
11 enforced. I've been able to get nothing of a substantive
12 response from anybody.

13 Q. And I assume that you got no substantive response on
14 the issue of how its enforced with respect to signs on
15 public property or rights-of-way; is that correct?

16 A. Absolutely.

17 Q. Okay. Now, sir, you're aware, are you not, there
18 were depositions taken in this matter yesterday; isn't that
19 correct?

20 A. Yes, sir.

21 Q. And you're aware that Mr. Onizuk testified
22 essentially that the City applies a rule of thumb; isn't
23 that correct?

24 A. Yes, I was there during that deposition.

25 Q. And the rule of thumb is if a sign appears between a

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1 curb and a sidewalk, that's not allowed, that's somehow the
2 City right-of-way; is that right?

3 A. That's what I heard, yes.

4 Q. It has to be removed from that area?

5 A. That's what he said yesterday. That's the first time
6 I heard that standard.

7 Q. And if there is no sidewalk, they somehow look to see
8 if there is a telephone pole or a utility pole around and go
9 from the back side of that to determine where marking line
10 is between the public right-of-way and the private property;
11 isn't that correct?

12 A. I heard that as well.

13 Q. And if there is no sidewalk or curb or utility pole,
14 then there is no private right-of-way, isn't that correct?

15 A. That is correct. I heard that as well.

16 THE COURT: No private or no public
17 right-of-way?

18 MR. SCHILTZ: Excuse me. There is no public
19 right-of-way if there is no curb, sidewalk or pole, so you
20 can put the sign anywhere, Your Honor.

21 THE COURT: Do you want to ask him?

22 BY MR. SCHILTZ:

23 Q. Is that correct, sir?

24 A. That is what he said yesterday. And again, that is
25 the first time I heard any standard articulated at all in

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1 trying to get an answer. But, yes, that is what he said
2 yesterday.

3 Q. And you never heard that before?

4 A. No, sir.

5 Q. And you asked, didn't you?

6 A. Yes, very much so. In fact, that was the whole point
7 of going to Mr. Ferrese from the very beginning, to avoid
8 all of this.

9 Q. And in fact, you had these various communications
10 orally with City representatives and you had your attorneys
11 write them letters, didn't you?

12 A. That is correct.

13 (Documents passed forward.)

14 MR. SCHILTZ: Your Honor, I'm handing the
15 witness what we marked as Plaintiffs' Exhibit 8 and
16 Plaintiffs' Exhibit 9.

17 BY MR. SCHILTZ:

18 Q. Sir, can you identify these two exhibits?

19 A. Yes, sir. These are two letters written by an
20 attorney working on behalf of the campaign, a gentleman by
21 the name of Eugene Lawson, and each was written on behalf of
22 the campaign and the individual candidates, myself and
23 Mr. McCarthy, Mr. Shields. One was -- well, both of them,
24 were self-explanatory, go to the point of, look, we tried to
25 find out what the rules are. You couldn't articulate the

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1 rules. Now signs are being taken out and, you know, what is
2 going on here?

3 MR. SCHILTZ: Your Honor, I moved the admission
4 of Plaintiffs' Exhibits 8 and 9.

5 MR. SPEAKMAN: No objection, Your Honor.

6 THE COURT: They're admitted without objection.

7 * * * (Plaintiffs' Exhibit Nos. 8 and 9 were received
8 into evidence.)

9 BY MR. SCHILTZ:

10 Q. Sir, could you briefly state whether or not you
11 believe the City is acting in a manner that is consistent
12 with the policy that Mr. Onizuk articulated yesterday during
13 his deposition?

14 A. Well, with all due respect, that is a little bit of a
15 difficult question because as I understood Mr. Onizuk, I
16 mean I'm not sure that what he was articulating, what he
17 was calling a policy, I'm not sure it's a policy because at
18 one point he described these various scenarios and then at
19 other times he said something like I'm not sure what I
20 would do there, but I probably wouldn't take it under
21 those circumstances, and then at other times, he would
22 speak inconsistently. So to be perfectly honest, I'm not
23 sure, I'm not even sure after listening yesterday that any
24 reasonable person could understand what the policy is.

25 Q. Thank you. Sir, what is your objective in bringing

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1 this lawsuit?

2 A. Your Honor, it's really simple. I've got this very,
3 very narrow window of time and from the heart, all I'm
4 trying to do, I'm trying to get my signs out so people who
5 come into town who are voters will recognize my name. It's
6 purely, purely First Amendment, period. I have no other. I
7 don't enjoy being here. This is wasting. It's wasting a
8 lot of time, to be perfectly honest. I should be out
9 campaigning.

10 THE COURT: All right.

11 MR. SCHILTZ: I have no further questions.

12 THE COURT: Okay. Mr. Rhodunda.

13 MR. RHODUNDA: Yes. Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. RHODUNDA:

16 Q. Good morning, Mr. Sokolove.

17 A. Good morning, sir.

18 Q. You have read the ordinance 74-16; is that correct?

19 A. Yes, sir.

20 Q. And that ordinance specifically prohibits any person
21 from maintaining or posting any private advertisement,
22 poster or sign upon any beach, strand, public boardwalk,
23 park sidewalk, street or other public property or way within
24 the City limits; is that correct?

25 A. That is what it says.